

In re Interest of Jameson S. et al.

Caselaw No.

A-16-243

Filed on

Tuesday, October 11, 2016

SUMMARY: Robert S. appeals from the order of the separate juvenile court for Douglas County which terminated his parental rights to his four minor children. Robert asserts that the lower court terminated his parental rights erroneously and that termination is not in the children's best interests. The Court of Appeals affirms the lower court.

Robert is the biological father of Jameson S., born in August 2012; Jozlyn S., born in September 2011; Jerzi S., born in September 2010; and Iniyah S., born in January 2008.

On April 12, 2013, the State filed a petition alleging that the children were within the meaning of Neb. Rev. Stat. § 43-247(3)(a) by fault of Robert due to a discovery by law enforcement that his residence was "filthy" and in an "unwholesome condition," his failure to provide proper parental care, his failure to provide safe and stable housing, and because of the risk of harm to the children.

On June 13, 2013, the court entered an adjudication and disposition order finding the children within the meaning of § 43-247(3)(a). Robert pled no contest to the allegations, with the exception to the alleged failure to provide safe, stable, and/or appropriate housing for the children which was dismissed. The court ordered the children to remain in the custody of DHHS, with the option of placing them with Tiffany, their biological mother, and Robert. Further, Robert was ordered to participate in IFP services for up to 18 weeks; abstain from using alcohol and/or drugs; undergo random drug screening; obtain and maintain a legal source of income; and obtain and maintain adequate and safe housing.

On October 17, 2014, the State filed for immediate custody of the children as a result of their positive drugs screens for methamphetamine and marijuana. The children's maternal grandmother, who lived in the home with the children, admitted to using both drugs in the home. Robert tested positive for both substances as well. The lower court granted the State custody and the children were removed.

On August 5, 2015, the lower court entered a review and permanency planning order, due to the length the case had been open and the lack of progress toward reunification. It was ordered that no further reasonable efforts for reunification with Robert were required. On

October 27, 2015, visitation with Robert was suspended which and reordered the following month. Also on October 27, the State filed to terminate Robert's parental rights pursuant to § 43-292(2) and § 43-292(6) and in keeping with the children's best interests. An additional motion was filed by the state to terminate their biological mother's parental rights as well.

At the January 29, 2016 termination hearing, the State called witnesses to outline its case. First, the family's initial IFP specialist testified that goals for Robert remained largely the same in the case from start to finish. During her visits, the specialist recalled not seeing much progress on Robert's part and a failure in learning new parenting techniques. She did not recall him being able to maintain employment and did not use the educational or monetary resources provided during IFP to his advantage.

Iniyah's therapist testified that during her visits with the family from June to October 2015, she observed numerous parenting problems with Robert and Tiffany, including physical and verbal aggression. She further noted that children would often act out with little substantive intervention and discipline by Robert. Attempts to guide Robert resulted in his assertion that he knew how to parent and that further therapy was not needed. The therapist concluded that the sessions were doing more harm than good. Therapy was discontinued in October 2015 and the therapist noted that Iniyah had made progress in the aftermath. As a result, the therapist recommended suspending further therapeutic visits because of Robert's lack of progress in learning new parenting methods, inability to make progress in individual therapy programs, and his continued substance abuse problems.

Another therapist testified about visits he supervised during the same period and described Robert's lack of desire to appropriately discipline his children during visits. Robert's reasoning for this attitude during the visits was to not spend the limited time he had with the children disciplining them.

A family permanency specialist also testified about her time as Robert's case supervisor from July 2014 to October 2015. She described Robert's employment history as sporadic and noted that the longest period of employment she could recall was no longer than two months. This specialist detailed the range of diagnostic testing and evaluations Robert needed to complete and her explanations to him of their importance to regain custody of his children. She also listed a series of support resources that were provided for Robert, such as transportation to appointments, to no effect.

The family permanency specialist also detailed the housing barrier experienced by Robert and Tiffany in providing adequate shelter for their children. She described their existing housing as not safe due to the grandmother's meth problem, the lack of cleanliness of the house, and the number of people sharing the small space. The specialist had informed Robert that the Nebraska Family Collaborative could supply them with a down payment on a house if he could find one that he could demonstrate long-term affordability for the family. At no time did

Robert demonstrate an ability to adhere to this requirement.

Lastly, the specialist detailed the overall long-term lack of progress on Robert's part. This included continued drug use, inability to hold a job, lack of interest in locating adequate housing, failure to show up for appointments, failure to comply for what he did show up for, and lack of a desire for personal change.

Another family permanency specialist took over the case in October 2015 after the court ordered that reasonable efforts for reunification were no longer required. She stated that Robert missed several drug screens and continued testing positive for marijuana when he did submit screens. A chemical dependency evaluation in January 2016 recommended individual therapy and intensive outpatient substance abuse therapy which Robert never started.

Following the termination hearing, the court entered an order finding that the State had proven by clear and convincing evidence that grounds for termination of Robert's parental rights existed under § 43-292(2) & (6) and that termination was in the children's best interests. As a result, termination was ordered for all four minor children.

Robert subsequently filed this appeal which alleges that the evidence presented at the termination hearing was not clear and convincing, nor was there clear and convincing evidence that it was in the children's best interests.

Turning first to the statutory grounds for termination, the Court of Appeals looks at § 43-292(6) which provides that a court may terminate parental rights when, "[f]ollowing a determination that the juvenile is one as described in [§ 43-274(3)(a)], reasonable efforts to preserve and reunify the family . . . have failed to correct the conditions leading to the determination." Here, Robert admitted that the home was not suitable for his children to live during the June 13, 2013 hearing and was ordered to complete a list of requirements to remedy the family's issues. However, despite given ample time and resources to achieve these goals, he has been unable or unwilling to work towards progress. Of the witnesses that testified, none were able to identify and significant progress in Robert. He refused to show up for appointments, was discharged from treatment for non-compliance, continued to test positive for drugs, refused help, rejected parental education, sabotaged therapy, misused resources, and showed little interest in improving housing conditions for his family.

Thus, the Court of Appeals concludes that the evidence presented at the hearing sufficiently demonstrates that the State made reasonable efforts to reunify the family, Robert made no consistent effort towards reunification, and has, therefore, failed to correct the reasons the children were removed from the home in the first place. As a result, the Court affirms the termination order by the lower court.

With regard to whether the termination is in the children's best interests, the Court employs the *Jeremiah J. v. Dakota D.* parental fitness standard. 287 Neb. 617 (2014). That standard holds that parental unfitness, in the context of termination of parental rights cases, is a personal deficiency or incapacity which has prevented, or will probably prevent, performance of a reasonable parental obligation in child rearing and which caused, or probably will result in, detriment to a child's well-being.

Applied here, Robert has failed to make progress, even at the most basic level, toward reunification despite ample time, opportunity, and resources. Several of the witnesses interviewed during the hearing stated that termination was in the children's best interests.

Lastly, the Court states that termination of Robert's parental rights is in the best interests of the children and cites *In re Interest of Walter W.* before declaring that children "cannot, and should not, be suspended in foster care or be made to await uncertain parental maturity." 274 Neb. 859 (2008).
